D.B. CIVIL SPECIAL APPEAL NO.556/2006
[MUNICIPAL COUNCIL, BHILWARA V.S MUNNA LAL & ORS.]

DATED : 25.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Dr.Sachin Acharya for appellant.

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We have heard learned counsel for the appellant. The appeal is filed against the judgment of learned Single Judge dated 04.11.2005, which relates to cancellation of employment of the petitioners, five in number, given under Municipal Council, Bhilwara.

In pursuance of Advertisement issued for recruitment of Sweepers, after holding interviews by order dated 16.03.1999, large number of persons including petitioners, were appointed. However, by order dated 16.04.1999 appointment of 29 persons amongst them the petitioners were cancelled. The order merely stated that these applicants had concealed reality by disclosing wrong facts in their affidavits in relating to the preferences to be given in the light of the directions issued by the High Court in S.B. Civil Writ Petition No.1713/1992.

However, the order did not say what was the fact wrongly stated or what was the fact which were required to be stated or

existed but have been concealed?

When the order was challenged before this Court, it was contended on behalf of Municipal Council, Bhilwara as per the directions of the High Court in the writ petition referred to above, preference in appointment was to be given to those who did not have any member of family of the applicant is neither in service of the Municipal Council or elsewhere. All the petitioners No.1, 2 and 3 had applied along with their respective brother/brothers for being appointed in pursuance of the said Advertisement and each one of them have filed affidavit that no member of their family is in service of the Municipality or other service. The substance of the reply submitted by the respondents was that all petitioners are inter related to each other and along with third brother they have filed applications for being appointed disclosing that none of the members of the family are employed. That is the only sin attributed to the petitioners for cancelling their appointments.

The learned Single Judge has found that under the Rules there is no such requirement that two persons of the same family cannot be given appointment. In other words, there is no ineligibility attached to a person, whose other member of the family is already in service to seek an employment and being appointed under the Municipal Council as Sweeper. Secondly, about the judgment which was referred to in the order of the Government

[Annexure 12] as judgment of the High Court and has been referred to in the reply of the counsel as the judgment of the Supreme Court perhaps by the learned Single Judge found that the directions under the said judgment ..... were confined to particular recruitment under the Municipal Council, Jaipur but no such general directions were issued which can be applied to all the Municipal Councils in the State. The learned Single Judge also made an observation that looking to the very backward class of the people who are seeking appointment minor infraction may be overlooked and be leniently dealt with. Finding that appointments were otherwise in accordance with rules and no ineligibility was attached to the appointees under the order dated 16.03.1999, the order cancelling appointments of petitioners was set aside. Learned Single Judge also observed that there being no definition of family, if applicants while filing declaration have confined reference to their first family, they cannot be faulted with.

We have heard learned counsel for the appellant.

We find that in the advertisement in pursuance of which appointment was sought by the petitioners in Column 8 only information required about the members of the family was ' whether any member of he applicant is employed under Municipal Council, Bhilwara or at any other place nd, if so, details of it may be furnished.'

Obviously this requirement referred to such member of appellants who are already in employment when application is made. There was nothing to ..... that if he memebr of the family cannot apply against same dvertisement. Nor it was requested to disclose whether any other member of the family of applicant has also applied for employment. Nor such guidelines could have been issued as it would have individual to seek any public employment if any of his relation is in employment. It would have been in c..... breach of constituted mendate of equality of opportunities in the matter of employment for every individual.

All the petitioners have stated along with their applications that none of the members of their family is employed under Municipal Council, Bhilwara o anywhere else. This statement is not.... to be wrong.

From the reply submitted by the respondents at best it can be said that the two or more brothers had simultaneous applied in pursuance of same advertisement. It is not even the case of the Municipal Council that any member of the petitioners' family, whether of the first family or remote, was already employed under Municipal Council, Bhilwara or elsewhere. Therefore, on their own, showing, there was no breach of condition about

furnishing requisite information nor the declaration that no member of their family is employed at Municipal Council, Bhilwara or anywhere else can be said to be incorrect, merely because two brothers have simultaneously applied and were appointed simultaneously. Moreover, when two brothers heading their individual families applied for the employments as bread earners of their respective families, it cannot be said that there is any breach of preference rules by giving appointment to both.

There is also no dispute that there is no prohibition under the Rules in offering appointment to the member of the same family. Nor there can be any prohibition altogether against offering such appointment as it would otherwise being in violation of the fundamental rights of the individual to seek equality of opportunity in the matter of employment.

We are satisfied on merit considering the pleadings of the respondents no case is made out for sustaining the order of cancelling of the petitioners appointment. No interference in the order of learned Single Judge is called for. The appeal is accordingly dismissed in limine.

[CHATRA RAM JAT], J. **[RAJESH BALIA],J.**

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